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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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12/31/2003

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EXAMINER

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Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/750,479
Filing Date: December 31, 2003
Appellant(s): NELSON ET AL.

Randall Fieldhack
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 1/11/08 appealing from the Office action mailed 9/7/07.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,318,555

Kuske et al.

11-2001

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to

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consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3 Claim 1-13 and 15-28 are rejected under 35 U.S.C. 103(a) as being unpatentable Kuske et al. USPN 6318555.

As to claims 1, 4, 8, 10-13, 15-17, 20, 24, and 26-28, Kuske discloses a package 50 enclosing multiple articles. Claim 13 recites “wherein the interior space is sized to enclose no more disposable absorbent articles than the single disposable absorbent article”. This added limitation is directed to a change in size of the interior space of the package. A change in size is within the level of one having ordinary skill in the art.

Kuske does not disclose the claimed ratios of folded to an unfolded configuration. However, Kuske does disclose the general condition of compressing the absorbent articles in the folded configuration (col. 4, lines 1-15). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the absorbent articles with the claimed ratio of the present invention, since where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation, *In re Aller et al.* 105 USPQ 233.

The package has a sheet of material 52 having a viewing region 88. The single disposable article 10 is folded and has a graphic 38, which is visible through the viewing region 88. Kuske teaches only one interior space and that this interior space is large

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enough for a single disposable article. The claim language does not exclude other articles, it limits the interior space to one interior space.

As to claims 2, 3, 5-7, 9, 18, 19, 21-23, and 25, Kuske does not specifically disclose the rigidity of the walls of the package. However, Kuske does describe a weakened area 74 to permit access to the absorbent articles. One having ordinary skill in the art would be motivated to have some less rigid areas to facilitate opening of the package. Additionally, it would be obvious to one having ordinary skill in the art have some regions more rigid. Doing so would provide a bag that is not completely collapsible and has the ability to maintain the structure of the absorbent articles.

(10) Response to Argument

Applicant's arguments filed 1/11/08 have been fully considered but they are not persuasive. Applicant repeats the argument that there is no motivation or suggestion in Kuske for one of skill in the art to modify the Kuske disclosure to achieve the claimed invention. Applicant repeats the argument that Kuske and present invention teach completely different ways of reducing at least one dimension of the absorbent article and Kuske does not teach experimenting with the folding of an absorbent article, only compressing the article thickness. Applicant argues that although the absorbent articles in Kuske appear to be folded once, no further folding is contemplated by Kuske. However, the examiner maintains that both Kuske and the claimed invention are

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concerned with reducing the dimensions of the absorbent article. The present invention teaches a disposable absorbent article in a folded configuration where the ratio in the folded configuration to the unfolded configuration is no more than 0.14. However, Applicant does not specify what dimensions are being compared in the ratio. How the size is reduced does not patentably distinguish the structure from the prior art structure. The width and height dimensions would change appreciably depending on how the article is folded. It is not novel to reduce the article by a lesser degree than what is claimed, since the general condition of reducing the size of the article is taught in the prior art.

Applicant argues folding each absorbent article would nearly double the thickness of the stack whereas Kuske seeks to reduce the thickness of the stack. However, doubling the thickness of the stack is not claimed. Applicant also argues that experimentation will not reduce the folded dimensions of the article as required by the claimed invention. However, reducing the folded dimensions of the articles is not claimed.

Applicant argues that the packaging material taught in Kuske is a material with a homogenous rigidity and the subject application calls for the package being made of a first piece of material and a second piece of material where one of the pieces of material being more rigid than the other piece of material. Kuske provides this in the frangible line 74, and windows 88 and 98. The claim does not require the entire piece of material is more rigid than the other piece of material.

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(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Jacqueline F. Stephens/
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